

POLICING AND CRIME BILL: MEMORANDUM ON THE APPLICATION OF STANDING ORDER 83L OF THE STANDING ORDERS OF THE HOUSE IN RESPECT OF THE GOVERNMENT AMENDMENTS TABLED FOR DAY TWO OF COMMONS REPORT STAGE

Summary

1. Subject to certain exceptions (as detailed in Annex H to the Explanatory Notes), the provisions of the Bill extend and apply to England and Wales only.
2. Taking into account the Government amendments tabled¹ for day two of Commons Report stage, in the view of the Government of the United Kingdom (“UK”), clauses 1 to 10 and Schedules 1 and 2 relate exclusively to England and would be within the legislative competence of the Scottish Parliament or Northern Ireland Assembly.
3. Taking into account the Government amendments tabled for day two of Commons Report stage, in the view of the Government of the UK, clauses 11 to 16, 18, 20 to 26, 28, 30 to 32, 37 to 39, 41, 43 to 46, 48 to 64, 67 to 70, 72 to 77, 101 to 103, 110 to 112, 115 and 135, new clauses 30 (*Public records*), 49 (*Retention of fingerprints and DNA profiles: PACE*), 55 (*Anonymity of victims of forced marriage*) and 56 (*Licensing functions under taxi and PHV legislation: protection of children and vulnerable adults*), and Schedules 3 to 5, 7, 8, 12 and 13 relate exclusively to England and Wales and would be within the legislative competence of the Scottish Parliament or Northern Ireland Assembly.

Commons Report stage amendments (day two)

4. The following is the Department’s assessment of the amendments, new clauses and new Schedule tabled by the Government for consideration on day two of Commons Committee stage (13 June).
5. With the exception of the amendment 108 to clause 132 (*Requirement to state nationality*), none of the amendments to existing clauses or Schedules to the Bill alter the territorial application of the clause or Schedule in question or the analysis at Annex H to the Explanatory Notes. Clause 132 on re-introduction applied to the whole of the UK; the effect of the amendment 108 (with amendments 111 and 113) is to confine the application of the clause to England and Wales and Northern Ireland.
6. The following new clause and new Schedule apply to England only, but in the view of the Government of the UK, it would not be within the legislative competence of the National Assembly for Wales, Scottish Parliament or Northern Ireland Assembly to make corresponding provision and, as such, the new clause and new Schedule are not certifiable under Standing Order 83L (see paragraph 11 below):
 - New clause 48 (*Inspection of fire and rescue authorities*);

¹ In this memorandum, the Government amendments are referred to by reference to the amendment, new clause or new Schedule number assigned to them in the Marshalled List.

- New Schedule 1 (*Schedule to be inserted as Schedule A3 to the Fire and Rescue Services Act 2004*).
7. Disregarding minor and consequential effects (see paragraph 10 below), the following new clauses apply to England and Wales only and, in the view of the Government of the UK, it would be within the legislative competence of the Scottish Parliament or Northern Ireland Assembly to make corresponding provision and, as such, the clauses are certifiable under Standing Order 83L (see paragraphs 12 to 14 below):
- New clause 30 (*Public records*);
 - New clause 49 (*Retention of fingerprints and DNA profiles: PACE*);
 - New clause 55 (*Anonymity of victims of forced marriage*);
 - New clause 56 (*Licensing functions under taxi and PHV legislation: protection of children and vulnerable adults*).
8. The following new clauses apply to the whole of the UK and, as such, in the view of the Government of the UK are not certifiable under Standing Order 83L:
- New clause 50 (*Retention of fingerprints and DNA profiles: Terrorism Act 2000*);
 - New clause 51 (*Extension of cross-border powers of arrest: urgent cases*);
 - New clause 52 (*Cross-border enforcement: powers of entry to effect arrest*);
 - New clause 53 (*Cross-border enforcement: minor and consequential amendments*);
 - New Schedule 2 (*Cross-border enforcement: minor and consequential amendments*);
 - New clause 54 (*Powers to seize invalid travel documents*).
9. The following new clause applies to Scotland only and, as such, in the view of the Government of the UK is not certifiable under Standing Order 83L:
- New clause 57 (*Powers of litter authorities in Scotland*).

Minor and consequential effects

10. New clause 30 (*Public records*) provides for the records of the Office for Police Conduct (the re-named Independent Police Complaints Commission) to become public records for the purposes of the Public Records Act 1958. The Public Records Act 1958 has UK-wide extent; however, the new clause will have no substantive effect in Scotland or Northern Ireland given that the provisions impact only on the functions of the Office for Police Conduct (an England and Wales only body).

Subject matter and legislative competence of devolved legislatures

11. New clause 49 (*Inspection of fire and rescue authorities*) and new Schedule 1 (*Schedule to be inserted as Schedule A3 to the Fire and Rescue Services Act 2004*) amend, in relation to England only, the provisions in the Fire and Rescue Services Act 2004 ("the 2004 Act") about inspection. Fire and rescue services are generally a devolved matter in Scotland, Wales and Northern Ireland. However, new Schedule 1 includes provision for an inspector appointed under the 2004 Act to obtain information. Those provisions include restrictions on the disclosure of information that originates or relates to the intelligence agencies and Her Majesty's forces which engage in intelligence activities. The Crown (including the intelligence agencies) and the armed forces of the Crown are reserved matters in Scotland (paragraphs 1 and 9 of Schedule 5 to the Scotland Act 1998) and in Wales. Furthermore, matters which relate to national security are also reserved under section B8 of Schedule 5 to the Scotland Act 1998. National security (including the intelligence agencies) and the armed forces of the Crown are excepted matters in Northern Ireland (paragraphs 17 and 4 of Schedule 2 to the Northern Ireland Act 1998), as such, the Scottish Parliament, National Assembly for Wales and the Northern Ireland Assembly could not make corresponding provision in respect of the inspection of fire and rescue services in their areas. New clause 49(7) introduces new Schedule 1 and is therefore subject to the same analysis.
12. New clause 49 (*Retention of fingerprints and DNA profiles: PACE*) applies to England and Wales only. New clause 49 makes further provision for fingerprints and DNA profiles to be retained by police forces in England and Wales on the basis of convictions for offences committed outside of England and Wales. The taking and retaining of DNA samples and profiles and fingerprints for the prevention, detection and investigative of crime is generally a devolved matter in Scotland and Northern Ireland and, as such, it would be within the legislative competence of the Scottish Parliament and the Northern Ireland Assembly to make corresponding provision in respect of the retention of fingerprints and DNA profiles by Police Scotland and the Police Service of Northern Ireland.
13. New clause 55 (*Anonymity of victims of forced marriage*) extends to England and Wales only. New clause 55 makes provision for the anonymity of victims of forced marriage in criminal proceedings and throughout the preceding investigation. It does this by introducing a prohibition on the publication of any matter that would be likely to lead to a member of the public to identify a person as an alleged victim of a forced marriage and by making breach of the prohibition a criminal offence. To ensure these provisions are consistent with the UK's obligations under Articles 12 to 14 of the E-Commerce Directive, the new clause provides that providers of information society services who are established in England and Wales are covered by the new offence even when they are operating in other European Economic Area states (other than the United Kingdom); to that extent the new clause has extra-territorial application. Legislating in respect of forced marriage is generally a devolved matter in Scotland and Northern Ireland and, as such, it would be within the legislative competence of the Scottish Parliament or the Northern Ireland Assembly to make corresponding provision to protect the anonymity of the victims of forced marriage in Scotland and Northern Ireland.

14. New clause 56 (*Licensing functions under taxi and PHV legislation: protection of children and vulnerable adults*) applies to England and Wales only. The new clause confers a power on the Secretary of State to issue guidance to public authorities as to how their functions in respect of the licensing of taxis and private hire vehicles (“PHV”) may be exercised so as to protect children and vulnerable adults from harm. The licensing of taxis and PHVs and their drivers is devolved in Scotland (not being one of the exceptions within section E1 of Schedule 5 to the Scotland Act 1998) and Northern Ireland, as such, it would be within the legislative competence of the Scottish Parliament or the Northern Ireland Assembly to make corresponding provision for such statutory guidance in Scotland and Northern Ireland. The licensing of taxis and PHVs and their drivers is currently reserved in Wales, although would be devolved under the terms of the UK Government’s draft Wales Bill published for pre-legislative scrutiny in the 2015/16 session (see section E1 of new Schedule 7A to the Government of Wales Act 2006 as inserted by Schedule 1 to the draft Bill).
15. The above assessment is presented in tabular form in the attached annexes.

Home Office
7 June 2016

Provisions in the Bill on re-introduction on 19 May 2016 taking into account Government amendments tabled for Commons Report

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Would corresponding provision be within competence of Welsh Assembly for Wales?	Extends and applies to Scotland?	Would corresponding provision be within competence of Scottish Parliament?	Extends and applies to Northern Ireland?	Would corresponding provision be within competence of Northern Ireland Assembly?	Legislative Consent Motion needed?
Part 1: Emergency services collaboration – Chapter 1: Collaboration agreements								
Clauses 1 to 5	Yes	No	No	No	Yes	No	Yes	No
Part 1: Emergency services collaboration – Chapter 2: Police and Crime Commissioners etc: Fire and rescue functions								
Clauses 6 to 8	Yes	No	No	No	Yes	No	Yes	No
Schedule 1	Yes	No	No	No	Yes	No	Yes	No
Part 1: Emergency services collaboration – Chapter 3: London Fire Commissioner								
Clauses 9 and 10	Yes	No	Yes	No	Yes	No	Yes	No
Schedule 2	Yes	No	Yes	No	Yes	No	Yes	No
Part 2: Police complaints, discipline and inspection – Chapter 1: Police complaints								
Clauses 11 and 12	Yes	Yes	No	No	Yes	No	Yes	No
Schedule 3	Yes	Yes	No	No	Yes	No	Yes	No
Clauses 13 and 14	Yes	Yes	No	No	Yes	No	Yes	No
Schedule 4	Yes	Yes	No	No	Yes	No	Yes	No
Clauses 15 and 16	Yes	Yes	No	No	Yes	No	Yes	No
Clause 17	Yes	Yes	No	No	No	No	No	No
Clause 18	Yes	Yes	No	No	Yes	No	Yes	No
Clause 19	Yes	Yes	N/A	In part	N/A	In part	N/A	No
Clauses 20 to 22	Yes	Yes	No	No	Yes	No	Yes	No
Part 2: Police complaints, discipline and inspection – Chapter 2: Police super-complaints								
Clauses 23 to 25	Yes	Yes	No	No	Yes	No	Yes	No
Part 2: Police complaints, discipline and inspection – Chapter 3: Whistle-blowing: Power of IPCC to investigate								
Clause 26	Yes	Yes	No	No	Yes	No	Yes	No

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Would corresponding provision be within competence of Welsh Assembly for Wales?	Extends and applies to Scotland?	Would corresponding provision be within competence of Scottish Parliament?	Extends and applies to Northern Ireland?	Would corresponding provision be within competence of Northern Ireland Assembly?	Legislative Consent Motion needed?
Schedule 5	Yes	Yes	No	No	Yes	No	Yes	No
Part 2: Police complaints, discipline and inspection – Chapter 4: Police discipline								
Clause 27	Yes	Yes	N/A	In part	N/A	In part	N/A	No
Schedule 6	Yes	Yes	N/A	Yes	N/A	In part	N/A	No
Clause 28	Yes	Yes	No	No	Yes	No	Yes	No
Schedule 7	Yes	Yes	No	No	Yes	No	Yes	No
Clause 29	Yes	Yes	N/A	In part	N/A	In part	N/A	No
Clause 30	Yes	Yes	No	No	Yes	No	Yes	No
Part 2: Police complaints, discipline and inspection – Chapter 5: IPCC: re-naming and organisation change								
Clauses 31 and 32	Yes	Yes	No	No	Yes	No	Yes	No
Schedule 8	Yes	Yes	No	No	Yes	No	Yes	No
Part 2: Police complaints, discipline and inspection – Chapter 6: Inspection								
Clause 33	Yes	Yes	No	No	No	No	No	No
Clause 34	Yes	Yes	N/A	In part	N/A	In part	N/A	No
Part 3: Police workforce and representative institutions – Chapter 1: Police workforce								
Clause 35	Yes	Yes	No	No	No	No	No	No
Schedules 9 and 10	Yes	Yes	No	No	No	No	No	No
Clause 36	Yes	Yes	N/A	In part	N/A	No	N/A	No
Clauses 37 to 39	Yes	Yes	No	No	Yes	No	Yes	No
Clause 40	Yes	Yes	No	No	No	No	No	No
Clause 41	Yes	Yes	No	No	Yes	No	No	No
Clause 42	Yes	Yes	N/A	In part	N/A	No	N/A	No
Schedule 11	Yes	Yes	N/A	In part	N/A	No	N/A	No
Clause 43	In part	In part	No	No	Yes	No	Yes	No
Schedule 12	Yes	Yes	No	No	Yes	No	Yes	No

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Would corresponding provision be within competence of Welsh Assembly for Wales?	Extends and applies to Scotland?	Would corresponding provision be within competence of Scottish Parliament?	Extends and applies to Northern Ireland?	Would corresponding provision be within competence of Northern Ireland Assembly?	Legislative Consent Motion needed?
Clauses 44 and 45	Yes	Yes	No	No	Yes	No	Yes	No
Part 3: Police workforce and representative institutions – Chapter 2: Representative institutions								
Clause 46	Yes	Yes	No	No	Yes	No	Yes	No
Clause 47	Yes	Yes	No	No	No	No	No	No
Clause 48	Yes	Yes	No	No	No	No	Yes	No
Schedule 13	Yes	Yes	No	No	No	No	Yes	No
Part 4: Police powers – Chapter 1: Pre-charge bail								
Clauses 49 to 64	Yes	Yes	No	No	Yes	No	Yes	No
Clauses 65 and 66	Yes	Yes	N/A	No	N/A	Yes	N/A	No
Part 4: Police powers – Chapter 2: Powers under PACE: Miscellaneous								
Clauses 67 to 70	Yes	Yes	No	No	Yes	No	Yes	No
Clause 71	Yes	Yes	N/A	In part	N/A	In part	N/A	No
Clause 72 and 73	Yes	Yes	No	No	Yes	No	Yes	No
Part 4: Police powers – Chapter 3: Powers under the Mental Health Act 1983								
Clauses 74 to 77	Yes	Yes	No	No	Yes	No	Yes	Yes (W)
Part 4: Police powers – Chapter 4: Police powers: Maritime enforcement in connection with England and Wales offences								
Clause 78	Yes	Yes	N/A	In part	N/A	In part	N/A	Yes (S, NI)
Clause 79	Yes	Yes	No	No	Yes	No	Yes	No
Clauses 80 to 86	Yes	Yes	Yes	Yes	N/A	Yes	N/A	Yes (S, NI)
Clauses 87 and 88	Yes	Yes	N/A	In part	N/A	In part	N/A	No
Clause 89	Yes	Yes	N/A	Yes	N/A	Yes	N/A	Yes (S, NI)
Part 4: Police powers – Chapter 5: Police powers: Maritime enforcement in connection with Scottish offences								
Clause 90	In part	In part	N/A	Yes	N/A	In part	N/A	Yes (S, NI)
Clause 91	No	No	N/A	Yes	N/A	No	N/A	Yes (S)
Clauses 92 to 98	Yes	Yes	N/A	Yes	N/A	Yes	N/A	Yes (S, NI)

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Would corresponding provision be within competence of Welsh Assembly for Wales?	Extends and applies to Scotland?	Would corresponding provision be within competence of Scottish Parliament?	Extends and applies to Northern Ireland?	Would corresponding provision be within competence of Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 99	In part	In part	N/A	Yes	N/A	In part	N/A	Yes (S)
Clause 100	Yes	Yes	N/A	Yes	N/A	Yes	N/A	Yes (S, NI)
Part 5: Police and Crime Commissioners and police areas								
Clauses 101 to 103	Yes	Yes	No	No	Yes	No	Yes	No
Part 6: Firearms								
Clauses 104 to 107	Yes	Yes	N/A	Yes	N/A	No	N/A	No
Clause 108	Yes	Yes	N/A	Yes	N/A	No	N/A	Yes (S)
Clause 109	Yes	Yes	N/A	Yes	N/A	No	N/A	No
Part 7: Alcohol: Licensing								
Clauses 110 to 112	Yes	Yes	No	No	Yes	No	Yes	No
Clauses 113 and 114	Yes	Yes	No	No	No	No	No	No
Clause 115	Yes	Yes	No	No	Yes	No	Yes	No
Part 8: Financial sanctions								
Clauses 116 to 122	Yes	Yes	N/A	Yes	N/A	Yes	N/A	No
Clause 123	Yes	Yes	No	No	No	No	No	No
Clauses 124 to 129	Yes	Yes	N/A	Yes	N/A	Yes	N/A	No
Part 9: Miscellaneous and general								
Clause 130	Yes	Yes	No	No	No	No	No	No
Schedule 14	Yes	Yes	No	No	No	No	No	No
Clause 131	Yes	Yes	N/A	Yes	N/A	Yes	N/A	No
Clauses 132	Yes	Yes	No	No	No	Yes	No	No
Clauses 133	Yes	Yes	No	Yes	No	Yes	No	No
Clause 134	Yes	Yes	No	No	No	No	No	No
Clause 135	Yes	Yes	No	No	Yes	No	Yes	No

Government new clauses and new Schedule tabled for day two of Commons Report

Provision	Extends to E & W and applies to England ?	Extends to E & W and applies to Wales?	Would corresponding provision be within competence of Welsh Assembly for Wales?	Extends and applies to Scotland?	Would corresponding provision be within competence of Scottish Parliament?	Extends and applies to Northern Ireland?	Would corresponding provision be within competence of Northern Ireland Assembly?	Legislative Consent Motion needed?
NC48 (Inspection of fire and rescue authorities)	Yes	No	No	No	No	No	No	No
NS1 (Schedule to be inserted as Schedule A3 to the Fire and Rescue Services Act 2004)	Yes	No	No	No	No	No	No	No
NC30 (Public records)	Yes	Yes	No	No	Yes	No	Yes	No
NC49 (Retention of fingerprints and DNA profiles: PACE)	Yes	Yes	No	No	Yes	No	Yes	No
NC50 (Retention of fingerprints and DNA profiles: Terrorism Act 2000)	Yes	Yes	N/A	Yes	N/A	Yes	N/A	No
NC51 (Extension of cross-border powers of arrest: urgent cases)	Yes	Yes	N/A	Yes	N/A	Yes	N/A	Yes (S, NI)
NC52 (Cross-border enforcement: powers of entry to effect arrest)	Yes	Yes	N/A	Yes	N/A	Yes	N/A	Yes (S, NI)
NC53 (Cross-border enforcement: minor and consequential amendments)	Yes	Yes	N/A	Yes	N/A	Yes	N/A	Yes (S, NI)

Provision	Extends to E & W and applies to England ?	Extends to E & W and applies to Wales?	Would corresponding provision be within competence of Welsh Assembly for Wales?	Extends and applies to Scotland?	Would corresponding provision be within competence of Scottish Parliament?	Extends and applies to Northern Ireland?	Would corresponding provision be within competence of Northern Ireland Assembly?	Legislative Consent Motion needed?
NS2 (Cross-border enforcement: minor and consequential amendments)	Yes	Yes	N/A	Yes	N/A	Yes	N/A	Yes (S, NI)
NC54 (Powers to seize invalid travel documents)	Yes	Yes	N/A	Yes	N/A	Yes	N/A	No
NC55 (Anonymity of victims of forced marriage)	Yes	Yes	No	No	Yes	No	Yes	No
NC56 (Licensing functions under taxi and PHV legislation: protection of children and vulnerable adults)	Yes	Yes	No	No	Yes	No	Yes	No
NC57 (Powers of litter authorities in Scotland)	No	No	N/A	Yes	N/A	No	N/A	Yes (S)